

The Christian News-Letter

No. 283

Edited by
KATHLEEN
BLISS

16th April, 1947

IT IS HARDLY LIKELY that many of our readers will have lighted on Air Marshal Harris's *Bomber Offensive* as Easter holiday reading. Yet it is a book which ought to be read, especially by Christians. The technical issues he raises have been ably discussed elsewhere in such periodicals as the *Economist*, the *New Statesman* and the *Tribune*. On the issue of strategic bombing, he may be right or he may be wrong; it is a matter for experts, though it is one to which the personal heroism of the men who served under Harris's command gives a quality of tragedy.

"BOMBER OFFENSIVE"

The reasons why this book has a claim on the attention of Christians are summarized in the following letter from Mr. Donald MacKinnon:

"Harris gives us in this book a picture of himself that is unforgettable. No one can read his pages without being made to encounter an unusual personality. As a young man Harris resisted strong paternal pressure to go into the army and at the age of sixteen left England for Rhodesia with a ticket and £5 in his pocket. There he became a farmer and there throughout his R.A.F. career half the man wanted to be. 'I never wanted to leave Africa, and now at last I am back there.' Because it is a human docu-

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SOME REFLECTIONS ON
"BOMBER OFFENSIVE"

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WHAT THEN IS THAT LAW?
By
SIR ARTHUR FFORDE

ment this book is of intense concern to Christians. Here we have a man surrendered wholly to his job, efficient, even ruthless, scolding in criticism yet loyal and generous to colleagues. His conception of the methods of warfare may have been technically wrong, but it cannot be denied that our extremity called for such men as he was.

"It is easy, of course, to find in this book little more than the text of a pacifist tract. But to do that is to oversimplify the issue grossly. Harris has to be met; we have to ask how the place in which he stands is related to one from which a man may hear the Word of God relevantly and searchingly spoken. Of course, to a pietism which insists that the Word of God speaks only to a religious heart of man, somehow insulated from his life and work, that is no problem. And others there are who will say that Harris is a monster: but the impression he leaves is of a *man*.

"The problem he sets us is evangelistic. One can almost hear his laugh, if he reads these words, but for the Christian, for whom there is no resting-place outside Christ, the alienation of Harris's mind from control by the law and love of God is an evangelistic problem. It is ridiculous to deny the technical autonomy of strategic problems; that is not at issue. But when one faces the problem set by a man, absorbed as a human being in a work of matchless destruction, remembering that it is in the souls of men that the final issues of good and evil are decided, one asks what is the work of the Church to such a man as this.

"Of course, the issue is not simply religious. No *truly* religious issue ever is; to treat it as purely religious is the illusion of the ecclesiastical man. A religious issue concerns man's good in the state as well as his eternal destiny. Such a man as Harris is not unrelated in temper to the kind of élite our technical civilization demands in peace as well as in war. What is our Christian verdict on e.g. the virtue of a ruthless efficiency? Have we a pattern of holiness for such men as Harris and his peacetime analogies? One would like to dismiss this question, and

perhaps in the end there is nothing else to do. But here is presented, in the clear lines of a caricature, a way of life that is not antagonistic to religious sanction, but simply alienated from it. Here we have an existential statement of our problem, in individual terms, of course ; for it is only in individual terms that the problem can be communicated. To grasp the problem, one must read the book, and enter into the human situation it discloses.

War—a problem of warriors

“ At a more obvious level the book raises the same issue as John Hersey’s *Hiroshima*, the issue of the methods of modern war. The discovery in the course of the war of new and terrible weapons has led to a widespread assumption that the weapons are the problem. It becomes clearer after a reading of *Bomber Offensive* that we need to see the problems of war as the problems of the warrior, grouping them in their human setting.¹

“ The ultimate issue that the book raises is, of course, the issue of the power element in human life. To those who strive to see what is really at issue in the present, the impression comes that the ultimate issue is focussed upon the triad—power, law and love. Of course these ultimate issues only meet us in untidy, messy relativities. But still our world is threatened at all levels by collapse into the belief that ultimately power is the one thing that counts.

“ The threat is great because it is sustained at so many levels. Harris’s attitude to bombing policy at certain points acknowledges no law to guide his action above that of forceful effectiveness. Granted the justice of the cause he served, what lights guided his service of that cause ? How in effect was his steadfast resistance to Hitler related to his blind, incomplete but ever-present faith in naked power ?

¹ “ The few weeks I spent on Tinian, the island in the middle of the Pacific from which the two attacks (on Hiroshima and Nagasaki) were launched stand out in my life not so much for the sight of the bomb itself, as for the effect on myself and the others of what we were doing.” Group Captain Cheshire, V.C., on the dropping of the atomic bombs on Japan, quoted in the *Listener*, 13th March, 1947. Ed.

"The Conservative strand in our western tradition has always insisted that the free society can only survive through the acknowledgement at all levels, through traditional disciplines, of the supremacy of law over will. At its best the Conservative mistrust of reform, of hectic legislative activity, has issued from the sense that such behaviour brings law into contempt, suggesting that it can be swung to the mood of the moment, and not discerned as an organ of discipline. Law, the Conservative insists, is not just the expression of power. But this great insight, shared by men as far removed in time and thought as Aristotle, Burke and Aquinas, is not brought into contempt solely by fire-eating demagogues. It is in peril equally at the hands of those who refuse to acknowledge that every established human order is tainted by evil and only relatively just, and of those who place undue reliance on such axioms as *necessitas non habet legem*. For if the man who sets himself above the state is either beast or god (Aristotle), the man who sees in the immediate necessity he serves an absolute above law, is subject to the same condemnation.

"How can men recover the means of discipline, the 'critique of satisfaction' which will enable them to master and not serve blind power? Of course they can only master power when they see it as under law, when their lives are governed by a sense of the finality and non-finality of law, its finality as the expression of divine order, its non-finality as also the expression of human choice and interest. But how to recover this? And to recover it without loss of the new horizons opened in the experiment of recent centuries?

"Here is our religious crisis, religious because here every element of human existence is staked. It is only through the vision of the love of God that men can be brought out of this horrible circle in which they seem imprisoned, by that love reflected in the self-authenticating mirror of believers. But that is not holiness of withdrawal but of engagement, of readiness to take life seriously.

For where ultimately do we communicate what we think the world is except in what we are ? ”

BROADCASTING IN HOLY WEEK

Listeners to the Third Programme can have had little to complain of in the music, prose and poetry broadcast during Holy Week, and listeners to the Home Service, if they have stayed up late enough, have no doubt heard with appreciation Professor C. H. Dodd's brief talks. But the B.B.C.'s treatment of Good Friday calls for some comment. True, fuel cuts have taken several hours a day from regular broadcasting. But under far more stringent conditions on the first Good Friday of the war when there was only one programme, at least one of the three most sacred hours in the Christian year was devoted by the B.B.C. to a religious service. This year Home Service listeners had a quarter of an hour at midday and they might perhaps have considered that Parsifal was to some extent a religious broadcast. But listeners to the Light Programme had five minutes from the Rev. Joseph McCulloch last thing at night and nothing more. Fantastic figures are quoted by Listener Research for the listening public to the Sunday morning service on the Light Programme. Why did they get nothing on Good Friday? What happened to those in hospital beds, many of whom have no choice on their ear-phones but the Light Programme? Is religion in the Corporation's view only a priority in war, and are we to see it henceforward identified with academic taste?

THE SUPPLEMENT

Sir Arthur fforde is a company lawyer and is a member of Council of the Law Society. His war-time experience as a civil servant, combined with his own legal knowledge, make what he has to say on the subject of delegated legislation important. Sir Arthur fforde is a member of the Christian Frontier Council.

Kathleen Bliss

WHAT THEN IS THAT LAW?

BY SIR ARTHUR FFORDE

I.

THE defences, through the law, for those liberties that are threatened by the concentration of power, constitute upon the frontier between Christianity and politics a strong-point which in the present conflict is heavily engaged. Which way, for the time being, the engagement will go will depend on the extent to which we believe, and act upon that belief, that it is for us among the first necessities, if we would know the reality of freedom, that power of all kinds should be subordinated to a law of some kind.

For a century at least, the enormous and progressive development of scientific discovery has very largely proceeded from the acceptance, and from action by scientists upon the acceptance, of the hypothesis that there exists a truth about nature which is independent of themselves, but can be discovered objectively by patient research and by the mutual interchange of knowledge as it is vouchsafed.

Concurrently, but conversely, in the realms in which justice or the reverse is manifested either in politics or in law, the former belief in a truth independent of ourselves—in a justice discoverable by men, but not created by them—has given place to the view that in a state which is sovereign it is the state which is supreme. In the conception of law, there is nothing basic, this view might allege, beyond those formal rules of procedure and of good order, which the sovereign state, in the light of convenience, necessity, and the furtherance of whatever ends it for the time being wishes to pursue, sees fit to lay down for the time being, and to alter as suits the occasion. Unlike the men of science, we modern politicians, knowing what is what, have rediscovered the Prince of Macchiavelli; and are freed from the old superstition that anything objective exists either to be learnt or to bind our hands. We can, in short, prefabricate the answers and know a thing or two besides into the bargain.

Nevertheless, the contrast between the progress of science and the retrogression of liberty is also a fact : and the paradox is still a sound one, that if we are still to get control of ourselves we must still subordinate ourselves to something else.

II.

In the domain of Laws and of Politics in England, these generalizations at present come to the point of actuality partly in the sphere of delegated legislation, and partly in the sphere of administrative action by authorities to whom power is delegated.

It is not necessary, to the illustration of the subject in short compass, to go far into technicalities. But it is helpful to recognize that the subject at once touches four strands of thought. *First*, the conception of a justice external to men, but which it must surely be the concern both of politics and of law to interpret in terms of everyday human life : *secondly*, that the development of science is constantly concentrating power into still more dominant nuclei : *thirdly*, that as the integration of a developed industrial civilization proceeds, the problems of administration, centralized at the seat of power, impose a constantly increased intensity of pressure on those, still human, beings who are called upon to exercise and control forces powerful and complex : and *fourthly*, that in face of that intensified pressure, there is no livable way but the way of delegation and decentralization, not of administrative action only, but also of the actual function of lawmaking itself.

It is the purpose of this Supplement to try to disentangle the questions that emerge for Christians from those four strands.

III.

In this section it will be convenient to take for consideration, from the strands last mentioned, the third and the fourth, in that order.

(a) Not much illustration is needed of the way in which pressure is increasingly upon the central authority. From the moment when the second war was seen to be approaching, it was accepted that a vast concentration of control and regimentation of life would become expedient : and there was prepared,

in advance, the legislative scheme of the Emergency Powers (Defence) Act, 1939, ready to be enacted, in all its stages, and practically without discussion, by a Parliament which, in face of the necessity, could not know at all precisely what laws it was creating. The effect of that statute was to entitle the King in Council to make orders governing, or enabling his Ministers, practically speaking without previous reference to Parliament, to govern the life of every citizen and every organization in the country, from the major matters of personal liberty and the right, under Habeas Corpus, to be brought to trial, down to such orders as made it, for the time being, a criminal offence to wave a handkerchief at an aeroplane, to drop a bus ticket in the street, or to fly a kite in the fields. This statute was, indeed, at once a wholesale concentration of lawmaking power into the hands of one individual, and an acceptance of a wholesale delegation of that lawmaking power, with its administrative implications, into the hands of innumerable subordinate authorities.

These things need no further emphasis. But it is much to the purpose to underline, at this point, the motive involved in action on this scale. It was a motive of expediency. It was action of self-preservation at all costs, action justified—that is, found expedient—because for the time being survival, at any cost to the liberties of individuals, was to be preferred to destruction. In face of these necessities, said the state, the individual, in law at least, does not count.

And it is also to the purpose, that, though the original cause of this legislation has now passed over us, the aftermaths of war continue many, if not most, of the necessities. From these necessities arise the control of foreign exchange, the control of internal credit, the control of land utilization, of the supply of materials, of the purchase of many classes of goods, of food, of building materials, of fuel, and of an innumerable list of other activities, in the control of all of which not only are individual liberties in a sense invaded, but correspondingly there occurs an extension of the field of power, which, though delegated widely, still flows essentially from the centre.

And finally, from a properly hard-headed view point, it is as well to make no bones about the fact that many of these inter-

ferences with a man's particular wish to do what he will with himself and his property, are and will remain not only practical necessities of self-preservation, but practical advantages without which, as the inter-war years have shown, it is more than likely that we shall fail, even on the economic plane, to make the best of the abundance that once was ours, and that can be ours again. Indeed, we can scarcely now question the rightness of imposing by law some measure of discipline, if not upon ourselves as individuals, yet at any rate upon those economic units, state owned or otherwise, in whom the development and extension of scientific processes will inevitably continue to concentrate power.

(b) Because, therefore, a continuance of these necessities and pressures, from the point of view of expediency, is likely to continue the call for a centralization of powers over what are themselves in greater or less degree questions of detail, there will continue also the necessity for delegation both of law-making and of the administration of the laws thus made.

As concerns the machinery for delegation of the law-making function, it is at least doubtful whether in practice the existing procedure can be much altered. That procedure, which was reviewed in the report of the Donoughmore Committee on Ministers' powers, involves that any delegation of the original law-making power must be by Parliament, that is by Statute; and, normally, that the power when delegated must be exercised by means of Statutory Rules or Orders, and within the limits set by the statutes under which those rules or orders are made. In theory, the rules and orders are themselves open to consideration by Parliament, either before they become effective, or within a short period after they have been promulgated. In theory, therefore, the central authority retains control of the situation, and a Minister who seeks to act in a manner which Parliament considers inappropriate or too absolute can be restrained.

But in practice, the same pressures which have produced the necessity for the delegation of power will tend to weaken the safeguards against its misuse. Members of Parliament may be too busy to notice an order, or to realize its real implications. There may not in practice be time to protest; or the protest may

not be sufficiently backed ; or it may occur at a time in the evening too late for publicity in the Press ; or there may not be space for it in the newspapers ; and finally, even if all these difficulties are overcome, it still remains unlikely that an organized political party with a majority in parliament will readily overrule its own administration. Here again, therefore, the combination of the pressure of necessity and of the concentration of power works in practice against the preservation of liberties and against the subordination of power to the laws.

Yet, here also, there is no practical alternative by which the problem can be avoided. On the contrary, the problem being inescapable, the course must be to accept it, but in doing so to understand as fully as we are able what it involves ; and in this connection to keep in mind, not only that the question can arise without any sort of bad faith on the part of the Minister concerned, but also that, apart from the making of the laws, justice is engaged further in the question of their administration, which is a different thing.

As to the good faith of any Minister, past, present, or future, and whether or not one agrees with him as to his wisdom, it is needful to remember that he has taken as his own primarily the cause of wise and efficient administration for the good, as he sees it, of the community. He finds, therefore, that those same high loyalties which in wartime underlie the motive of patriotism, have in him become engaged in the service of efficiency, expediency, productivity, in whatever field in the department over which he presides is of practical and immediate concern. He, therefore, once convinced that upon some subject an order must be made, is, with his officials, primarily concerned to see that the order, when made, is effective. Yet orders vary in their effectiveness, according as the subject is simple or subtle. An order that no kite shall be flown in Hampshire may not be easy to enforce, but by comparison with some subjects of more important legislation is simplicity itself. Here am I, there up in the air is the kite, here is the policeman, and I am holding the string ; *Quod erat demonstrandum*. The policeman need never leave the high-road, for he knows me, and I know him. Nor is there, in this case, any administrative question of justice engaged.

But consider as a different example the problem of legislation to control foreign exchange, something not tangible. The ways in which legislation on that subject can be evaded are numerous and difficult to detect. In order to make legislation effective, it has been found at times necessary not only to make use of a postal censorship, and the power to search travellers entering or leaving the kingdom, but also to enact (1) that it is a criminal offence not merely to do, but even to refrain from doing certain things, (2) that if information is required it must be given, even if the giving of it tends to incriminate the giver, and (3) that in deciding whether an offence has been committed, it is unnecessary for the prosecution to prove any criminal intent.

Thus far has expediency and efficiency overruled justice in the maker of laws : and, as to administration, since the only object of these rules is the expediency of conserving foreign exchange, it becomes necessary for the administrator to allocate the available resources between such incommensurable objects as (1) the claim of a business man to go abroad on business, (2) the claim of an invalid to live abroad to save his life, (3) the requirements of a Church for missionary activities, and (4) the desire of the general public for an ample supply of tobacco : as between all which several claims, on the whole, it is impossible to specify any general principle upon which they can be decided ; so that as far as justice is concerned, the administration of the law tends to create the general impression that justice does not matter, and that accordingly it is not feasible or even necessary for the administrator to trouble his head about it at all. From which position it is no long step to the point of making use of powers created for one purpose, in order to achieve something quite different : as, for instance, having been authorized by Parliament to ration supplies of news print, to use that authority to suppress a newspaper one does not like.

In short, under this heading of the subject, necessity tends to create in the first place a suspension of safeguards against the growth of arbitrary power ; secondly, a strong call and an apparent justification for its use ; and thirdly, a general acceptance of the fact, without much consideration of what is implied : and these results all flow from the objective of expediency, inter-

preted in terms of material ends, and accordingly liable to start into existence in a state of blindness to the things of the spirit, of which certainly justice is one.

IV.

Taking as assumed the second of our four strands, we come in this section to consider the first, the conception of justice. True it is, that in part, in the process of its interpretation into terms of everyday life, justice is a matter of machinery, of legislation, and of the intellectual solution of administrative problems and difficulties. But it is also more than these things.

Of the intellectual aspect, of the machinery of state, it can indeed be said that in a negative sense a wrong formulation can render impossible the survival of liberties, unless some other force intervenes to set right the position.

To recognize this danger, without at all adopting an alarmist attitude, is of great importance. For although the necessity for the delegation of powers, both legislative and administrative, be accepted, yet the way in which it is accomplished may predetermine the eventual outcome of the main conflict. For example :

(1) Where power to make laws is delegated, the delegation should be plainly made and publicly known, in order that the public conscience may consider the question. Thus, irrespective of our political views, when it is a question of the nationalization of the Bank of England, we should consider that there ought not in the same statute, but with far less clarity of intention, to be a delegation of power to control all other banks. Whether the other banks should be controlled is not here the point. The point is that, if power to control them is delegated, the fact of that delegation should be plainly seen and plainly considered.

(2) The person to whom power is delegated should know what his powers are, and what are their limits, and should not himself have power to extend those limits. For example, if a competent court holds that a Town Planning scheme, or a Minister's decision under it, is outside that Minister's power, or that those powers have been wrongly exercised, that Minister should not himself have power to extend or alter the law so as to cover the same decision or to make it formally in order.

(3) No authority to whom power is granted should be himself the judge in his own cause. There should always be an appeal on the question whether any authority has exceeded the delegated power, and that appeal should not be to the authority itself.

(4) Nor should the tribunal to whom the appeal goes be in any way dependent upon the authority from whose decision the appeal is made.

(5) Powers delegated for one purpose should never be used as an indirect means of achieving another.

(6) No pains should be spared to enable people wherever reasonably possible to know what are, and what are not, their own duties, rights, and liabilities.

These examples are not in any sense exhaustive : but perhaps, as to the last of them, it is worth commenting that it proceeds from the principle that justice must not only be done, but be seen to be done : and that one of the most insidious of the effects of a widespread system of detailed delegated authority is that people tend not to know where they are, and to be uncertain what they may do, and what they may not do, and hence either to give up their initiative on the ground that everything is really too difficult, or else to take chances, on the ground that the only practical conclusion is that, on the whole, the law does not matter. Indeed, in the case of a large system of detailed controls exercised by many different officials in imperfect co-ordination, not only does the control seem to the outside observer to be unintelligible, but it is sometimes the case that it has, even to the initiated, no real mind of its own at all. It is possible, in these circumstances—though we may believe, as far as England is concerned, extremely unlikely—that there should grow up a machinery of dictatorship evolved from a kind of absence of mind.

It is, accordingly, on the intellectual aspect of the question of justice, very important to ensure, by a constant but not alarmist awareness of what is really involved, that in the process of making, and of administering, delegated power, those who make the law shall make it definitive, and continue to observe it ; those who administer it shall do so with a readiness to submit their

exercise of power to a scrutiny from outside themselves ; and those over whom powers are exercised shall be enabled to know what sanction is behind the ruler, what limits there are to his power, and what remedies there are against its abuse. Nothing is more dangerous than apparent safeguards which are in practice illusory ; and in the construction of the delegated regime, it is from the intellectual standpoint essential to devise means whereby, where a conflict arises between the necessities of state and the rights of the individual, that conflict can find a place in which it can be fairly fought out, and justly decided.

V.

But, however carefully these intellectual aspects of the question are considered, and however apt may be the machinery of safeguard against a power not subordinated to a proper law, nevertheless it remains true that justice is more than a question of intellect.

For just as, at the outset of war, the general consent of Parliament allowed Members to take on trust, and without scrutiny, wholesale abrogations of individual liberties and of parliamentary control, so also a series of lesser necessities will constantly tend to press upon us the case for a series of lesser abrogations, amounting in total, and by a gradual aggregation, possibly even to a major surrender. The post upon the frontier, to return to our first simile, need not be frontally attacked. It can be carried by a process of infiltration : and indeed might be so carried, were the individual defenders of it not watchful or not resolved.

Furthermore, and perhaps less obviously, any over-statement of the dangers of the present situation—and many over-statements are made—may result in a decision by the average man, the individual who matters, that the threat to these liberties is being exaggerated for other ends ; and may weaken thereby the main strategic decision to defend the post at all costs.

These costs, in appearance at least, are at all times an immediate sacrifice of efficiency, of expediency, or of effectiveness. It is in the name of these tutelary deities that the High Priests of this form of statecraft demand their authority : and often, it is to be recognized, validly demand it, so far as their immediate vision

can take them. Thus to every suggestion that the rights of an individual should be protected by an appeal to justice, there are valid objections that (a) the right to appeal will be abused, (b) the expense of administration will be increased, (c) the time which must elapse before hearing will delay the main plan and, (d) loopholes will be found in the law, which will, therefore, become ineffective. In the name of expediency, of efficiency, and of effectiveness, therefore, these obstacles, say the priestcraft, had better be removed.

From the standpoint from which they are made, these claims are powerful and convincing, and against the background of competition with other, and more ruthless, political systems, not hampered by such scruples as ours, the case is the stronger, in the name of expediency, for more effective and more efficient action.

But unless we are to defend personal liberties, why is it that we should not imitate those more ruthless competitors, and go the whole way? And if personal liberties are to be defended, how else are they to be defended but by putting justice before expediency, that is by insisting that power is to be subordinated to law?

This necessarily means a subordination, not in general theory, but in specific day-to-day practice: for if anything is certain, it is certain that you can never defend liberty in the abstract. No amount of generalization about the ideal of liberty and the rule of law will give to those conceptions an actual and living existence for ordinary men and women. It is in life that liberty is expressed. It is in particular and personal liberties that humanity lives. It is by an active defence of those things in actual daily life that individuals are enabled to become that which they were intended to be.

Of course, if man were by nature an economic animal, if all that men were intended to be were good cogs in a smooth machine, efficient and obedient producers of standardized outputs per man hour, contented consumers of uniform and predetermined calorific values, and controlled contributors to a gradually increasing population of creatures exactly like themselves—if these things were thus, then the question of individual liberties would be among those which need no longer arise: for

the proposition that all men are equal in the sight of God would be reduced to the truism that all men had become exactly alike.

But as long as all are not alike, and at the same time each is intended to be a person who counts, so long will justice be a matter of importance for the development of men and women to the stature they were created to attain.

And if, for the individual, duty thus consists in following that course of action which will enable him and his neighbour to grow true to the true characters with which each was created, so also, for the state, justice is that principle in the body politic which enables the individual subject to fulfil that duty: for which purpose, as many and terrible examples have shown us, it is necessary that power should be subordinated to law.

Or again, if it is true that for the individual perfect freedom lies in perfect service to a master who is himself perfect, it must also be true that no state which claims to be sovereign is entitled to call itself free, save and unless its sovereignty is in turn governed by a law not alterable at its own ungoverned pleasure.

What, then, is that Law?

It is in this question that justice, and the pursuit of it, and its fulfilment, seem to extend further than the intellectual; into a field in which we should do well to accept, as a working hypothesis, the assumption that there exists, as in the nature into which science has fruitfully inquired, a truth which is independent of ourselves, but can be discovered objectively by patient research, and by the mutual interchange of knowledge as it is vouchsafed.

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Bound Volumes—Vols. II—X (May 1940—Dec. 1945) 8s. 6d. each post free, or 7s. 6d. each in sets of four or more consecutive volumes.

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THE CHRISTIAN NEWS-LETTER, 20 BALCOMBE STREET, DORSET SQUARE, LONDON, N.W. 1.

Published by Dr. J. H. Oldham for the Christian Frontier Council, and printed in Great Britain by the Church Army Press, Cowley, Oxford.